

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2017 JAN 27 AM 9:52

CLERK

BY LAN  
DEPUTY CLERKUNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JONATHAN HENRY,

Plaintiff,

v.

VERMONT DEPARTMENT OF  
CORRECTIONS and JEREMY BRADLEY,

Defendants.

Case No. 2:16-cv-41

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

(Docs. 19 &amp; 28)

This matter came before the court for a review of the Magistrate Judge's October 26, 2016 Report and Recommendation ("R & R") (Doc. 28), in which he recommended that the court grant Defendant Jeremy Bradley's motion to dismiss Plaintiff's claims under 42 U.S.C. § 1983 against him in his individual capacity. (Doc. 19.) The court had previously dismissed the claims against Defendant Bradley in his official capacity.

On September 16, 2016, Plaintiff responded that he would not file a substantive reply because he expected the court to grant the motion. On October 21, 2016, during a status conference before the Magistrate Judge, Plaintiff's counsel advised that "there is no factual basis for [Plaintiff] to show that he exhausted his available administrative remedies before filing [his] lawsuit," and that Plaintiff therefore "could not oppose [Defendant] Bradley's [m]otion to [d]ismiss in good faith." (Doc. 28 at 2.) Neither party has filed an objection to the R & R, and the time period to do so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the


findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Because Plaintiff does not oppose Defendant Bradley’s motion to dismiss, the court adopts the Magistrate Judge’s conclusions and adopts the R & R in its entirety.

### CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge’s R & R (Doc. 28) as the court’s Opinion and Order, and GRANTS Defendant Bradley’s motion to dismiss Plaintiff’s claims against him in his individual capacity. (Doc. 19.) Plaintiff’s Complaint is hereby DISMISSED WITHOUT PREJUDICE.  
SO ORDERED.

Dated at Burlington, in the District of Vermont, this 26<sup>th</sup> day of January, 2017.

  
Christina Reiss, Chief Judge  
United States District Court